

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

STATE OF OHIO,	:	APPEAL NOS. C-090507
		C-090588
Plaintiff-Respondent-Appellee,	:	TRIAL NO. B-0706917
vs.	:	
		<i>JUDGMENT ENTRY.</i>
KEVIN LAWRENCE,	:	
Defendant-Petitioner-Appellant.	:	

We consider these appeals on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

In the case numbered C-090507, appellant Kevin Lawrence appeals the Hamilton County Common Pleas Court’s judgment convicting him of murder, felonious assault, and having a weapon under a disability. In the case numbered C-090588, he appeals the court’s judgment denying his R.C. 2953.21 petition for postconviction relief. We affirm both judgments.

I. Appeal No. C-090507

In his direct appeal from his convictions, Lawrence presents four assignments of error.

In his first assignment of error, Lawrence contends that the trial court’s order expelling “disrupt[ive]” spectators from the courtroom during the testimony of three defense witnesses violated his public-trial right, secured by the Sixth Amendment to the

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

United States Constitution. We overrule the assignment of error, because Lawrence's failure to object to this partial closure of the trial waived his public-trial right for purposes of those witnesses.²

We also overrule the second assignment error, challenging the legal sufficiency of the evidence adduced at trial and the balance struck by the trial court in weighing that evidence. Upon that evidence, any rational trier of fact could have found that the essential elements of murder, felonious assault, and having a weapon under a disability had been proved beyond a reasonable doubt.³ And the record does not demonstrate that the trial court, in resolving the conflicts in the evidence, lost its way or created such a manifest miscarriage of justice as to warrant reversing Lawrence's convictions.⁴

We overrule Lawrence's challenges in his third assignment of error to his trial counsel's effectiveness. Counsel did not violate an essential duty to Lawrence in failing to object to testimony by prosecution witnesses that corroborated the victim's identification of Lawrence as his assailant, because the statements were not, as Lawrence insists, hearsay.⁵ Nor was Lawrence demonstrably prejudiced by counsel's failure to object to leading questions put to the felonious-assault victim on direct examination by the assistant prosecuting attorney.⁶

And we overrule Lawrence's challenge in his third assignment of error to his counsel's failure to investigate, to secure the disclosure of, or to present at trial allegedly exculpatory evidence, as well as his fourth assignment of error, assailing the

² See *State v. Drummond*, 111 Ohio St.3d 14, 2006-Ohio-5084, 854 N.E.2d 1038, ¶24, citing *Peretz v. United States* (1991), 501 U.S. 923, 936, 111 S.Ct. 2661, and *Levine v. United States* (1960), 362 U.S. 610, 619, 80 S.Ct. 1038.

³ See *State v. Jenks* (1991), 61 Ohio St.3d 259, 574 N.E.2d 492, paragraph two of the syllabus.

⁴ See *State v. Thompkins*, 78 Ohio St.3d 380, 387, 1997-Ohio-52, 678 N.E.2d 541, quoting *State v. Martin* (1983), 20 Ohio App.3d 172, 175, 485 N.E.2d 717.

⁵ See Evid.R. 801(D)(1)(c); *Strickland v. Washington* (1984), 466 U.S. 668, 694, 104 S.Ct. 2052; *State v. Bradley* (1989), 42 Ohio St.3d 136, 141-143, 538 N.E.2d 373.

⁶ See *Bradley*, 42 Ohio St.3d at 143.

state's failure to disclose that evidence. Lawrence's postconviction petition was the proper vehicle for advancing these challenges because they depend for their resolution upon evidence outside the record.⁷

II. Appeal No. C-090588

In his appeal from the denial of his postconviction petition, Lawrence presents two assignments of error.

We address first and overrule the second assignment of error, in which Lawrence assails the entry of findings of fact and conclusions of law denying his postconviction petition by the common pleas court judge who had succeeded the judge who had presided over his postconviction hearing. The successor judge had the discretion to perform the duties of his predecessor.⁸ And a court denying a postconviction petition has the duty to make and file findings of fact and conclusions of law.⁹ The predecessor judge had stated from the bench his ruling on the petition and the underlying reasons. And the disposition of the petition cannot be said to have turned upon an assessment of the credibility of the allegedly exculpatory undisclosed evidence or a weighing of that evidence, when that evidence, even if credited, did not exonerate Lawrence in the crimes.¹⁰ We, therefore, overrule the assignment of error because, under the circumstances, the successor judge's decision to perform his predecessor's duty to make and file findings of fact and conclusions of law did not constitute an abuse of discretion.

⁷ See *State v. Perry* (1967), 10 Ohio St.2d 175, 226 N.E.2d 104, paragraph nine of the syllabus.

⁸ See Civ.R. 63(B); *Elsnau v. Weigel* (1983), 5 Ohio St.3d 77, 448 N.E.2d 1377.

⁹ See R.C. 2953.21(C) and 2953.21(G).

¹⁰ See *State v. Adewusi*, 1st Dist. No. C-070270, 2008-Ohio-2055, ¶11; *Concord Twp. Bd. of Trustees v. Painesville*, 158 Ohio App.3d 719, 2004-Ohio-5461, 822 N.E.2d 386; *Stychno v. Stychno* (Aug. 14, 1998), 11th Dist. Nos. 97-T-0003 and 96-T-5620; *Vergon v. Vergon* (1993), 87 Ohio App.3d 639, 643, 622 N.E.2d 1111; *O'Neal v. E. I. duPont de Nemours & Co.* (May 21, 1993), 6th Dist. No. L-92-111; *Arthur Young & Co. v. Kelly* (1990), 68 Ohio App.3d 287, 295, 588 N.E.2d 233; *Welsh v. Brown-Graves Lumber Co.* (1978), 58 Ohio App.2d 49, 51, 389 N.E.2d 514 (acknowledging that a successor judge's entry of "judgment on the transcript" is not an abuse of discretion if witness credibility is not a factor).

Finally, we overrule Lawrence's first assignment of error, challenging the denial of his postconviction claims. The common pleas court properly denied the claims, because the record of the postconviction hearing discloses competent and credible evidence to support the court's conclusions¹¹ that the prosecution had not violated its duty to disclose the allegedly undisclosed exculpatory evidence,¹² and that Lawrence's trial counsel had not, with respect to that evidence, violated his duty to adequately investigate and present Lawrence's defense at trial.¹³

Accordingly, we affirm the judgments of the common pleas court.

A certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

SUNDERMANN, P.J., HENDON and DINKELACKER, JJ.

To the Clerk:

Enter upon the Journal of the Court on August 4, 2010

per order of the Court _____.
Presiding Judge

¹¹ See R.C. 2953.21(G); *State v. Gondor*, 112 Ohio St.3d 377, 2006-Ohio-6679, 860 N.E.2d 77, at ¶58.

¹² See *Brady v. Maryland* (1963), 373 U.S. 83, 83 S.Ct. 1194; see, also, *Kyles v. Whitley* (1995), 514 U.S. 419, 435, 115 S.Ct. 1555.

¹³ See *Strickland*, 466 U.S. at 694; *Bradley*, 42 Ohio St.3d at 141-143.